

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Am

Mailed: March 30, 2015

Opposition No. 91211206

*Andros*

*v.*

*Molkerei Alois Müller GmbH & Co.  
KG*

**Benjamin U. Okeke, Interlocutory Attorney:**

On January 30, 2015, the parties filed a stipulated proposed amendment to application Serial No. 85675252 and withdrawal of the opposition with prejudice, contingent upon entry of the amendment.

By the proposed amendment Applicant seeks to amend the application in International Classes 29, 30 and 32 to add the following underlined language and delete the following struck language:

**International Class 29**

Yogurt products, namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors; ~~sweetened and fruit flavored yogurt; yogurt drinks; dairy products, excluding ice cream, ice milk and frozen yogurt; milk; milk products, excluding ice cream, ice milk and frozen yogurt; beverages having a milk base; jellies; jams; fruit purees; cheese; snack dips excluding salsa, chocolate and caramel; dairy based spreads; margarine; canned, dried, frozen or preserved fruit; canned, dried, frozen or preserved vegetables;~~

~~prepared, processed or roasted nuts; ready to eat vegetable based snack foods repackaged with dairy based dips.~~

**International Class 30**

~~Frozen yogurt, namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors and ice cream; dessert puddings; fruit jelly dessert candies; biscuits; cookies; cereal based snack foods and food bars; rice based pudding desserts.~~

**International Class 32**

~~Fruit beverages namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors containing yogurt; non-alcoholic drinks, namely, soft drinks, fruit drinks and fruit juices.~~

The amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and Opposer consents. *See* Trademark Rule 2.133(a). However, the amendment requires reclassification of the goods. In particular, the goods now identified as “[f]ruit beverages namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors,” must be classified in International Class 29, as the amendment indicates that the main component of the good is yogurt, *e.g.* “yogurt-based beverages,” in International Class 29. *See* TMEP § 1401.05. Proper classification of goods and services is a purely administrative matter within the sole discretion of the USPTO. *See In re Faucher Indus., Inc.*, 107 USPQ2d 1355, 1357 (TTAB 2013) (*quoting In re Tee-Pak, Inc.*, 164 USPQ 88, 89 (TTAB 1969)).

Accordingly, these goods are moved from International Class 32 to International Class 29, and International Class 32 is deleted from the application. The resulting identification of goods in International Class 29 is now:

Yogurt products, namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors; and Fruit beverages namely products that are comprised predominately of yogurt and contain a fruit component or fruit or other flavors.

To this extent Applicant's proposed amendment is **ACCEPTED** and **ENTERED**.

The contingency of Opposer's withdrawal having been met, the opposition is **DISMISSED** with prejudice.